

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)

Georgia-Pacific West, Inc.)

Mercury Cell Chlor/alkali Facility)

Bellingham, Washington)

)

MODEL

)

AGREED ORDER

)

)

No. DE

)

TO: Georgia-Pacific Corporation
133 Peachtree Street N.E.
P.O. Box 105605
Atlanta, Georgia 30348-5605

I.

Jurisdiction

This Agreed Order ("Order") is issued pursuant to the authority of RCW
70.105D.050(1).

II.

Findings of Fact

Ecology makes the following Findings of Fact, without admission of such facts by
Georgia-Pacific Corporation.

1. Georgia-Pacific has owned and operated a calcium-based sulphite pulp and
paper mill and chlor/alkali plant in Bellingham, Washington since the 1960's. The closed
chlor/alkali plant is located on the tidal flats of Bellingham Bay adjacent to Whatcom

Creek Waterway. The Site which is the subject of this Order is the closed chlor/alkali plant located in the southwest corner of the Georgia-Pacific West, Inc. plant, 1,500 feet from the operating paper facility, as shown in Attachment A to this Order.

2. In 1965 Georgia-Pacific built the chlor/alkali (chlorine) plant to produce chlorine and sodium hydroxide (caustic) for use in bleaching and pulping at the pulp and paper mill. From 1965 through 1999, Georgia-Pacific operated the mercury cell chlor/alkali plant on the Site.

3. Studies conducted at the Site have found mercury in groundwater, soils, and process materials in and around the mercury cell chlor/alkali plant.

4. Georgia-Pacific ceased operations at the chlor/alkali plant in 1999.

5. Georgia-Pacific shut down the chlor/alkali plant in 1999 and started planning cleanup procedures. From July 1999 through October 2001, Georgia-Pacific cleaned up and removed mercury containing process materials and equipment from the plant.

6. Georgia-Pacific completed an Independent Remedial Investigation and Feasibility Study (RI/FS) of the Chlor-alkali facility in 1994.

7. Georgia-Pacific was ordered in 1999 (Ecology Agreed Order DE TC99 I035) to submit a RI/FS Work Plan. The Work plan was submitted; and along with this Agreed Order is the basis for work to complete the RI/FS.

III.

Ecology Determinations

1. Georgia-Pacific is an "owner or operator" [or transporter/generator/manufacturer] as defined at RCW 70.105D.020(11) of a "facility" as defined in RCW 70.105D.020(4).
2. The facility is known as Georgia-Pacific West, Inc. chlor/alkali plant and is located at 300 West Laurel Street, Bellingham, Washington 98225.
3. The mercury found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(7).
4. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(19).
5. By letter dated May 4, 1999, Ecology notified Georgia-Pacific Corporation of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.
6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.
7. Based on the foregoing facts, Ecology believes the completion of the Remedial Investigation and Feasibility Study (RI/FS) required by this Order and Agreed Order DE TC99 I035 is in the public interest.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Georgia-Pacific Corporation take the following remedial actions to complete the RI/FS and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. Within 45 days of the effective date of this Order, Georgia-Pacific Corporation shall submit a sampling plan that initiates further soil investigations at the Site to complete the characterization of the location, quantity, aerial and vertical extent of the mercury soil contamination present on the Site. The sampling plan shall include methods to measure mercury vapor in addition to mercury in soil. After Ecology sampling plan approval Georgia-Pacific shall conduct the sampling. The sampling project and final report of data and findings shall be completed and submitted the Department 180 days after the approval of the sampling plan.
2. Within 45 days of the effective date of this Order, Georgia-Pacific Corporation shall submit a sampling plan that initiates further investigation of the ChemFix mercury sludge disposal area located on the chlor/alkali facility. The sampling plan shall develop both a sampling protocol and testing protocol to determine the ability of mercury to leach from the solidified ChemFix sludge under a range of possible soil pH

conditions. After Ecology approval of the sampling plan Georgia-Pacific Corporation shall conduct the sampling on the ChemFix material. The sampling project and final report of data and findings shall be completed and submitted to the Department 180 days after the approval of the sampling plan.

3. Within 180 days of the Departments approval of the final investigative reports on mercury contamination in site soil and leaching studies of the ChemFix solidified material, Georgia-Pacific shall submit for approval an updated Feasibility Study (FS). The updated Feasibility Study shall use the original July 1994 Chlorine Plant Feasibility Study as a starting point. The updated Feasibility Study shall include an analysis of cleanup action alternatives that are protective of human health and the environment in accordance with the requirements of WAC 173-340-350 and WAC 173-340-360. The analysis shall include an initial screening of remedial technologies and a detailed evaluation of a focused list of cleanup action alternatives.

V.

Terms and Conditions of Order

1. Definitions

Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notices.

WAC 173-340-600(11)(c) requires a 30 day public comment period before this agreed order on a state RI/FS becomes effective. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3. Remedial Action Costs. Georgia-Pacific Corporation shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Georgia-Pacific Corporation shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators. The project coordinator for Ecology is:

Name	Paul Skyllingstad
Address	Industrial Section Post Office Box 47706 Olympia, WA 98504-7706

The project coordinator for Georgia-Pacific Corporation is:

Name	Roger J. Hilarides
Address	Georgia-Pacific Corporation 300 West Laurel Street Bellingham, WA 98225

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Georgia-Pacific Corporation, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or Georgia-Pacific Corporation change project coordinator(s), written notification shall be provided to Ecology or Georgia-Pacific Corporation at least ten (10) calendar days prior to the change.

5. Performance. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. Georgia-Pacific Corporation shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site. Georgia-Pacific Corporation shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, Georgia-Pacific Corporation shall not perform any remedial actions at the Site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Georgia-Pacific Corporation. By signing this Agreed Order, Georgia-Pacific Corporation agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by Georgia-Pacific Corporation during an inspection unless doing so interferes with Ecology's sampling. Georgia-Pacific Corporation shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation Georgia-Pacific Corporation and Ecology shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. Georgia-Pacific Corporation shall help coordinate and implement public participation for the site.

8. Retention of Records. Georgia-Pacific Corporation shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of Georgia-Pacific Corporation, then Georgia-Pacific Corporation agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution. Georgia-Pacific Corporation may request Ecology to resolve disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), to this Order. Ecology resolution of the dispute shall be binding and final. Georgia-Pacific Corporation is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement. This Agreed Order is not a settlement under ch. 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against Georgia-Pacific Corporation to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against Georgia-Pacific Corporation to require those remedial actions required by this Agreed Order, provided Georgia-Pacific

Corporation complies with this Agreed Order. Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from chlor-alkali facility. In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Georgia-Pacific Corporation to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Georgia-Pacific Corporation without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order. Prior to transfer of any legal or equitable interest Georgia-Pacific Corporation may have in the site or any portions thereof, Georgia-Pacific shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, Georgia-Pacific Corporation shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws.

A. All actions carried out by Georgia-Pacific Corporation pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements,

including requirements to obtain necessary permits, except as provided in paragraph B of this section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in Section IV, the Work to be Performed and are binding and enforceable requirements of the Order.

Georgia-Pacific Corporation has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event Georgia-Pacific Corporation determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Georgia-Pacific Corporation shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Georgia-Pacific Corporation shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Georgia-Pacific Corporation and on how Georgia-Pacific Corporation must meet those requirements. Ecology shall inform Georgia-Pacific Corporation in writing of these

requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Georgia-Pacific Corporation shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and Georgia-Pacific Corporation shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Georgia-Pacific Corporation's receipt of written notification from Ecology that Georgia-Pacific Corporation has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

VII.

Enforcement

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
 - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
 - C. In the event Georgia-Pacific Corporation refuses, without sufficient cause, to comply with any term of this Order, Georgia-Pacific Corporation will be liable for:
 - (1) Up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
 - (2) Civil penalties of up to \$25,000 per day for each day it refuses to comply.
 - D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.

Effective date of this Order: October 1, 2002.

Georgia-Pacific West
300 W. Laurel Street
Bellingham, WA 98225

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
SOLID WASTE AND FINANCIAL
ASSISTANCE PROGRAM

By_____

By_____